

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. **TSCA-08-2004-0005**

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Carbon Power and Light)	
110 East Spring Street)	COMPLAINT AND NOTICE OF
Saratoga, Wyoming 82331)	OPPORTUNITY FOR HEARING
)	
)	
Respondent.)	
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COMPLAINT

1. This civil administrative enforcement action is authorized by Congress in section 16 (a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). The United States Environmental Protection Agency ("EPA") regulations governing polychlorinated biphenyls ("PCBs") authorized by TSCA are set out in part 761 of title 40 of the Code of Federal Regulations (CFR) and violations of the regulations constitute violations of the section 15 of TSCA, 15 U.S.C. § 2614 . The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 CFR part 22, a copy of which is enclosed.

2. The undersigned EPA officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent has violated section 15 of TSCA, 15 U.S.C. § 2614, and proposes the assessment of a civil penalty as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge to disagree with (1) any fact alleged by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

5. To disagree with the complaint, and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk , U. S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, within 30 days of receiving this

Complaint. The answer must clearly admit, deny or explain the factual allegations of the Complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer.

FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty proposed in the Complaint. Such payment need not contain any response to, or admission of, the allegations in the Complaint. Such payment constitutes a waiver of respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. If Respondent chooses to resolve this proceeding by paying the specific penalty proposed in this Complaint, payment must be made, within thirty (30) calendar days of receipt of this complaint, by sending a certified or cashier's check payable to "Treasurer, United States of America," in care of:

U. S. EPA, Region 8
(Regional Hearing Clerk)
Mellon Bank
P. O. Box 360859M
Pittsburgh, PA 15251

A copy of the check must be mailed simultaneously to the attorney listed below.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Mr. Dana J. Stotsky at 1-800- 227-9441, extension 6905 or the address below.

Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.

GENERAL ALLEGATIONS

The following general allegations apply to each count of this Complaint:

1. EPA has jurisdiction of this matter under section 16 of TSCA, 15 U.S.C. § 2615.

2. Respondent, Carbon Power & Light, Inc., a corporation in good standing in the State of Wyoming, is a "person" within the meaning of 40 C.F.R. § 761.3, and thus subject to regulation.
3. Respondent was, at all times relevant to this action, the owner and operator of the facility located at 110 East Spring Street, Saratoga, Wyoming, 82331.
4. On or about May 13, 2004, Kim P. Le, an authorized EPA inspector, conducted an inspection of the facility, with the consent of respondent, to determine compliance with TSCA and EPA regulations relating to polychlorinated biphenyls (PCBs), 40 C.F.R. part 761. Notices of inspection and confidentiality were issued to representatives of respondent.
5. The EPA's PCB regulations define "disposal" of PCBs to include "spills, leaks, and other uncontrolled discharges of PCBs...." 40 C.F.R. § 761.3.
6. The PCB regulations require that PCBs, as defined at 40 C.F.R. section 761.3, be disposed of by the incineration or burial methods specified in the regulations. 40 C.F.R. section 761.60.
7. EPA's PCB regulations prohibit the use of "PCB Transformers" as defined at 40 C.F.R. Section 761.3, except as authorized by the regulations. 40 C.F.R. Section 761.20-.30.
8. One of the conditions the PCB regulations imposes on the use of "PCB Transformers" is that such units must be registered with EPA's National Program Chemicals Division, Office of Pollution Prevention and Toxics, be inspected for leaks at least once every 3 months, and records of such inspections shall be maintained at least 3 years after disposing of the transformer. 40 C.F.R. Section 761.30.
9. Additionally, one of the conditions the PCB regulations impose on PCBs, PCB Items and PCB storage and disposal facilities is that annual reports are required to be prepared and maintained for three years. 40 C.F.R. Section 761.180.
10. Additionally, one of the conditions the PCB regulations impose on PCB Transformers and PCB electrical equipment is that they are properly dated and properly stored when they are stored for disposal. 40 C.F.R. Section 761.65.
11. At respondent's facility, the EPA inspector determined that respondent was using PCB transformers, as defined at 40 C.F.R. § 761.3, without visually inspecting them on a quarterly basis and also failed to prepare and maintain PCB Annual Reports. Also, the inspector observed a PCB Transformer leaking PCBs or dielectric fluid, which by

regulation is an improper disposal of PCBs. Also, the inspector observed that PCB transformers stored for reuse at its facility were improperly stored. Also, the inspector observed that respondent failed to register its PCB transformers with EPA's National Program Chemicals Division, Office of Pollution Prevention and Toxics. Because respondent failed to comply with the above-described regulations, the use of such transformers was and is prohibited by the regulations, 40 C.F.R. Sections 761.20-.180, and such use thus constitutes violations of section 15 of TSCA, 15 U.S.C. Section 2614. These violations are outlined specifically in the counts below.

COUNT 1

12. In Respondent's open air storage yard, during the inspection, the EPA inspector observed a leak on the bottom of the Westinghouse PCB contaminated transformer, serial number 3849420, with a PCB concentration of 80 ppm in an area of 2ft x 3inches.
13. Respondent's failure to properly dispose of the leaking PCBs described in the paragraph above, as required by 40 C.F.R. § 761.60(a), constitutes a violation of section 15 of TSCA, 15 U.S.C., section 2614.

COUNT 2

14. During the inspection, the EPA inspector determined that Respondent failed to register its PCB transformers in service or stored for reuse with EPA's National Program Chemicals Division, Office of Pollution Prevention and Toxics, on or before December 28, 1998, as required by 40 C.F.R. § 761.30(a)(vi)(A).
15. The transformers referenced in the preceding paragraph are: A. General Electric transformer, serial number H212323, with a PCB concentration of 670 ppm; B. General Electric transformer, serial number H2211970-68P, with a PCB concentration level of 778 ppm; C. General Electric transformer, serial number 7655555 with a PCB concentration of 711 ppm; D. General Electric transformer, serial number F53923865P with a PCB concentration of 533 ppm.
16. Respondent's failure to properly register its PCB transformers, as described in the above two paragraphs and as required by 40 C.F.R. § 761.30(a)(vi)(A), constitutes a violation of section 15 of TSCA, 15 U.S.C., section 2614.

COUNTS 3 - 16

17. The EPA inspector determined that Respondent failed to conduct required quarterly visual inspections of Respondent's PCB transformers which were in use, and maintain

records of the same, for:

1. The first calendar quarter of 2004; (COUNT 3)
 2. All four calendar quarters of 2003; (COUNTS 4-7)
 3. All four calendar quarters of 2002; (COUNTS 8-11)
 4. All four calendar quarters of 2001; (COUNTS 12-15)
 5. All calendar quarters prior to 2001; (COUNT 16)
18. Respondent's failure to properly conduct and maintain records for visual inspections of its PCB transformers as described in the preceding paragraph, and as required by 40 C.F.R. § 761.30(a)(ix), constitutes fourteen violations of section 15 of TSCA, 15 U.S.C. section 2614.

COUNT 17

19. The EPA inspector determined that the Respondent failed to provide the inspector the records of storage for reuse for its transformers denominated as transformers stored for reuse.
20. 40 CFR 761.35 (a) specifies requirements applicable to owners of PCB Articles stored for reuse in areas not designed, constructed, or operated in compliance with 40 CFR 761.65(b), including maintaining records regarding use, marking, and dating.
21. Respondent's failure to properly maintain records as described in the paragraph above, as required by 40 CFR 761.35 (a), constitutes a violation of section 15 of TSCA, 15 U.S.C., section 2614.

PROPOSED TSCA PENALTY

Section 16 of TSCA, 15 U.S.C. § 2615, as amended, and the regulations promulgated under section 6 of TSCA, 15 U.S.C. § 2605, authorize the assessment of a civil penalty of up to \$27,500 per day of violation for each violation of TSCA. Additionally, on February 13, 2004, the EPA Administrator caused to be promulgated, at 69 Fed Reg 7121, a Final Rule which implements the Civil Monetary Penalty Inflation Adjustment Rule, as mandated by the Debt Collection Improvement Act of 1996, and authorizes EPA to assess civil penalties of up to \$32,500 for TSCA violations occurring on or after March 15, 2004. Should EPA determine that violations alleged herein against Respondent did occur on or after March 15, 2004, **EPA provides this NOTICE** that it reserves its right for leave to amend any and all pleadings so that such pleadings are consistent with the revised penalty schedule authorized by 69 Fed Reg 7121 (Feb. 13, 2004).

In arriving at a penalty, EPA will take into consideration those factors required by section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(b), which include: the nature, circumstances, extent, and gravity of the violation, and, with respect to respondent, the ability to pay, effect on

ability to continue to do business, any history of prior violations, degree of culpability, and other matters as justice may require.

EPA's actions with respect to the assessment of civil penalties are guided by its Polychlorinated Biphenyls (PCB) Penalty Policy, dated April 9, 1990, which provides a rational and consistent method for applying the TSCA statutory factors to the circumstances of a specific case.

Pursuant to section 15 of TSCA, Respondent may be assessed a penalty of up to \$32,500 per violation of TSCA. EPA herein below provides a brief explanation of the severity of each violation alleged and a recitation of the statutory penalty authority applicable for each violation alleged in the complaint, as allowed by 40 C.F.R. § 22.14(a)(4)(ii):

COUNT	PROPOSED PENALTY
COUNT 1	\$1,500
COUNT 2-16	\$45,000
COUNT 17	\$1,500
TOTAL PROPOSED PENALTY	\$48,000

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 9/21/04

By: **SIGNED**
Martin Hestmark, Director
Technical Enforcement Program

Date: 9/22/04

By: **David Rochlin for M. Risner/**
Michael T. Risner, Director
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program
303-312-6917
janik.david@epa.gov

Date: Sept. 21, 2004

By: **SIGNED**
Dana J. Stotsky
Senior Enforcement Attorney
Legal Enforcement Program
U.S. EPA Region 8
Colorado Bar # 14717
999 18th Street, Suite 300
Mail Code: 8ENF-L
Denver, Colorado 80202-2466
Phone: (303)-312-6905
FAX: (303) 312-6953
stotsky.dana@epa.gov

IN THE MATTER OF: Carbon Power & Light,
 EPA Docket No.

CERTIFICATE OF SERVICE

I hereby certify that the attached COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING dated was served as follows:

The original and one copy was hand carried to:

Regional Hearing Clerk
U.S. EPA, Region VIII (8RC)
999 18th Street, Suite 500
Denver, CO 80202-2405

A copy was sent via CERTIFIED MAIL, RETURN RECEIPT REQUESTED, postage prepaid, to:

WILLIAM W. DALLES
Registered Agent for: Carbon Power & Light, Inc.
110 EAST SPRING ST
SARATOGA, WY 82331

9/28/04
Date

SIGNED
Ms. Judith McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 28, 2004.

